IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL APPLICATION NO.1612 OF 2007

Vinay Ghanshyam Desai .. Applicant.

Versus

Union of India & Ors. .. Respondents.

WITH

CRIMINAL APPLICATION NO.1613 OF 2007

Sanjay G. Sawane .. Applicant.

Versus

Union of India & Ors. .. Respondents.

Mr.Naresh Kaushik i/b.Mr.Yogesh Rohira for the applicant.

Mr.H.V.Mehta for Union of India - respondent Nos.1 and 2.

Mr.Y.M.Nakhwa, A.P.P. for respondent No.3-State.

CORAM : R.M. SAVANT, J.

(VACATION JUDGE)

DATE : 16th MAY, 2007.

P.C.:

1. These applications are for anticipatory bail or in the alternative for bail, the applicants in each of the above applications are apprehending arrest in a case involving evasion of duty in respect of goods which are admittedly not notified goods within the meaning of Section 123 of the Customs Act, 1962. The offences are punishable under Sections 135(1)(i) or 135(1) (ii) of the said Act. Depending upon the provisions of the Customs Act which the respondent Nos. 1 and 2 want to invoke, the said reliefs are claimed in the above application.

2. Mr.Naresh Kaushik, learned counsel appears for the applicant and submits that since the Respondents have not communicated as to which of the penal provisions i.e. Section 135(1)(i) or Section 135(1)(ii) they want to invoke that the above applications have been filed by the applicants. It is further submitted that the offence under Section 135(1)(ii) is bailable, but in the absence of the Respondents clarifying the position in the notice which they have given for arrest, the applicants are constrained to approach this Court, apprehending arrest and custody. Mr.Mehta, appears for respondent Nos.1 and 2, the learned counsel for the respondents though does not candidly state at the Bar, nor in the Affidavit whether the offences are punishable under Sections 135 (1) (i) or 135(1)(ii), he fairly submits that since the goods

involved are not notified goods, the appropriate Section would be applied looking to the said nature of the goods.

3. In my view, the proper remedy for the applicants herein would be to approach the concerned Additional Chief Metropolitan Magistrate, Mumbai for seeking the relief sought in the present applications.

4. To facilitate the applicants making such an application, an interim protection of 10 days is granted to the applicants, within which period the applicants shall not be arrested. The aforesaid protection is granted in the peculiar facts of the present cases as indicated above. The above applications are accordingly disposed of.

5. The learned Magistrate to decide the applications that would be filed by the applicants abovenamed in accordance with law and as expeditiously as possible within a period of two weeks of their filing.

(R.M. SAVANT, J.)